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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

Jennifer L. Wilson

**CASE NO: 12-12020 (MG)**

Plaintiff,

ADV. CASE: \_\_\_\_\_

v.

RESIDENTIAL CAPITAL, LLC;  
RESIDENTIAL FUNDING  
COMPANY, LLC; and Does 1 – 10  
inclusively,

**ADVERSARY COMPLAINT**

**JURY TRIAL DEMANDED**

Defendants.

**(1) Breach of Contract  
(2) Unfair Deceptive Acts and  
Practices**

[Filed concurrently; NOTICE AND DEMAND FOR  
JURY TRIAL]

**COMPLAINT**

01. Plaintiff, Jennifer L. Wilson, files this Complaint against  
defendants, RESIDENTIAL CAPITAL, LLC (“RCL”); Residential Funding  
Company, LLC (“RFC”); and Does 1 – 10 inclusively, alleges, on information and  
belief as to all the facts other than as to Plaintiff, as follows:

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**JURISDICTION AND VENUE**

02. This is an adversary proceeding pursuant to Rule 7001 et seq. of the Federal Rules of Bankruptcy Procedure.

03. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334.

04. This adversary proceeding constitutes a NON-CORE proceeding pursuant to 28 U.S.C. §§ 157(c), 157(d), and 157(e).

05. This District is the proper venue for this proceeding pursuant to 28 U.S.C. § 1409.

**NATURE OF THE ACTION**

06. This Complaint arises from actions and/or inactions, taken by the defendants RCL and RFC a subsidiary of RCL and/or its agent(s) acting on behalf of RCL and/or RFC, either individually and/or collectively, resulting in several pervasive breaches of the conditions and terms of the "NOTE" and/or Deed of Trust ("Deed"), and multiple violations of federal and state law governing Federally Related Mortgages.

07. RCL, through its subsidiaries, engaged in the business of originating, and acquiring by purchase, residential mortgage loans and re-selling said loans into a "TRUST" RCL subsidiaries, RFC, created. In 2007, RFC purchased a NOTE, whom defendant Jennifer L. Wilson (hereinafter "Wilson") is the maker, and Deed of Trust (hereinafter collectively "CONTRACTS") from SunTrust Bank and/or its subsidiary SunTrust Mortgage, Inc., and then sold the CONTRACTS into the "RALI Series 2007- QS5 Trust" collectively benefiting defendants RCL, RFC, its agents SunTrust Bank (hereinafter "STB") and its subsidiary SunTrust Mortgage, Inc. (hereinafter "STM").

08. Agreements entered into between RFC, STB and/or STM to sell the CONTRACTS to RFC, and subsequently, absent any disclosure to the contrary,

1 STM continued masquerading as the "Lender" and "Servicer" pursuant to said  
2 agreement with RFC, wantonly misleading Wilson to believe STM is/was both the  
3 owner and servicer of the alleged obligation.

4 09. STB, an agent of RCL and RFC, executed and caused to be recorded a  
5 substitution of trustee to act on its behalf. This substitution of trustee can only be  
6 characterized as a pervasive deception upon Wilson that STB, as parent of STM,  
7 is/was the owner of the obligation, a wantonly false characterization both RCL and  
8 RFC knew to be false.

9 10. Through, a contractually void, appointment of a substitute trustee  
10 STB, acting in the capacity of agent for RCL and RFC (hereinafter collectively  
11 "RCRF"), engaged Substitute Trustee Services, Inc. (hereinafter "STSI") and its  
12 parent The Law Firm of Hutchen, Senter, and Britton, P.A. (hereinafter "HSB")  
13 also known as (a/k/a) to act in the capacity of a substitute trustee and counsel for  
14 the same cloaked; 1) the true nature and capacities of STB and STM; and 2) filed  
15 specious documents, and affidavit(s) with the Clerk of the General Court of Justice  
16 North Carolina.

17 11. These specious documents and affidavits filed in the General Court of  
18 Justice mislead the clerk of the General Court of Justice North Carolina Cabarrus  
19 County into believing the four elements required by the North Carolina Statutes  
20 were met prompting the clerk to issue an ORDER authorizing STSI to proceed  
21 with a non-judicial foreclosure sale.

22 12. In furtherance of this deception RCRF, either directly or indirectly,  
23 caused STM, subsidiary of STB, to file a false "PROOF OF CLAIM" in the United  
24 States Bankruptcy Court North Carolina Western District.

25 13. Wilson alleges RCRF and its agents engaged in both express and  
26 implied misrepresentations.

1 14. Wilson alleges RCRF engaged in Unfair, Deceptive Acts and  
2 Practices.

3 15. Wilson alleges RCRF and its agents engaged in violations of the  
4 Racketeer Influence and Corrupt Organizations Act.

5 16. Wilson alleges RCRF and its agents breached specific provisions of  
6 the NOTE.

7 17. Wilson alleges RCRF and its agents breached specific provisions of  
8 the Deed of Trust.

9 18. Wilson's reliance upon the false, misleading, and deceptive  
10 representations made by RCRF agents on behalf of RCRF is the proximate cause  
11 for the damages Wilson has suffered.

12 **PARTIES**

13 19. The Plaintiff, Jennifer L. Wilson, is unaware of all the true names and  
14 lawful capacities of the all the Defendant(s) sued and/or agents for the  
15 Defendant(s) sued herein as DOES 1 through 10, but is informed and believes and  
16 thereon alleges that additional defendants may be responsible in some manner for  
17 the acts alleged herein and/or discovered at some future date and/or purports to  
18 hold or claims to hold a legal or equitable right, title, estate, lien or other interest in  
19 the Property, which is subsequent to and subject to the Plaintiff's. Plaintiff  
20 therefore sues said defendants by such fictitious names and will seek leave of the  
21 Court to amend this Complaint to their true names, capacities and add any  
22 additional causes of actions that be ascertained.

23 20. Residential Funding Company, LLC, is and at all times herein  
24 mentioned a limited liability company incorporated under the laws of the State of  
25 Delaware, with its principal place of business at 380 Jackson St., Suite 700, Saint  
26 Paul, MN 5510. As of December 4, 2008, Residential Funding Company, LLC, is a

1 wholly-owned subsidiary of Residential Capital LLC, a Delaware limited liability  
2 Company, which itself is a wholly-owned subsidiary of GMAC LLC ("GMAC").

3 **BACKGROUND**

4 **SECURITIZATION PROCESS SUMMARIZED**

5 21. Plaintiff repeats, re-alleges and incorporates each and every allegation  
6 contained in paragraphs 1 through 20 as though fully set forth herein.

7 22. Prior to April 7, 2007, Residential Funding Company, LLC  
8 established the "RALI Series 2007- QS5 Trust" (hereinafter "TRUST") for the  
9 purpose of securitizing mortgage loans.

10 23. RFC established (created) a single asset entity named "Residential  
11 Accredit Loans, Inc."

12 24. Residential Accredit Loans, Inc. (hereinafter "RALI") purpose is to  
13 act as a conduit for the TRUST, purchasing, receiving, and conveying (assigning)  
14 into the TRUST mortgage loans RFC either purchased or originated.

15 25. Residential Accredit Loans, Inc. is identified and bears the title  
16 "Company" in the TRUST.

17 26. Residential Funding Company, LLC is identified and bears the title  
18 "Master Servicer" in the TRUST.

19 27. Deutsche Bank Trust Company Americas ("DBTCA") is identified  
20 and bears the title "Trustee" in the TRUST.

21 28. RFC sells the mortgage loans; it either purchased from other  
22 originators or was the principal originator, into the TRUST.

23 29. RFC is required to endorse the Notes it sold to RALI and execute an  
24 assignment of the interest in the Notes along with the relevant Deeds of Trust or  
25 Mortgage documents (hereinafter "Security Instruments").

1 30. RALI then conveys and transfers by assignment all ownership title  
2 and interest in the purchased mortgage loan document (Notes and Security  
3 Instruments) to DBTCA.

4 31. DBTCA holds the mortgage loan documents for the benefit of the  
5 certificate holders of the TRUST.

6 32. The TRUST is governed by the trust laws of the State of New York,  
7 the Securities and Exchange Commission Regulations, and Title 26 of the Internal  
8 Revenue Code for a “Real Estate Mortgage Investment Conduit” (“REMIC”).

9 33. Mortgage loans sold into a REMIC are held in trust for the benefit of  
10 the certificate holders, therefore they may not pass freely in and out of the trust.

11 34. The “Custodian” (Bank One, National Association)<sup>1</sup> for the TRUST is  
12 responsible for maintaining and preserving all the original mortgage loan  
13 documents held for the benefit of the TRUST certificate holders.

14 35. Specific contractual conditions are set forth in the TRUST; private  
15 trust laws for the State of New York; and Title 26 of the Internal Revenue Code for  
16 the transfer of the mortgage loan documents from the “Custodian” for the TRUST  
17 to the “Substitute Trustee” in the event a mortgage loan is to be foreclosed.

18 36. The contractual conditions for transfer of the mortgage loan  
19 documents, for the purpose of foreclosing, are contained in the TRUST agreement  
20 known as the “POOLING AND SERVICING AGREEMENT”.

21 **STATEMENT OF FACTS**

22 37. Plaintiff repeats, re-alleges and incorporates each and every allegation  
23 contained in paragraphs 1 through 36 as though fully set forth herein.

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<sup>1</sup> JP Morgan Chase Bank, National Association acquired Bank One Corporation, the parent of Bank One, National Association, in 2004.

1 38. On January 18, 2007 Wilson, as maker of the "NOTE" named  
2 SunTrust Mortgage, Inc. d/b/a Sun America Mortgage a Virginia Corporation  
3 "Lender". (See Exhibit A, attached).

4 39. On January 18, 2007 Wilson executed a "Deed of Trust" pledging all  
5 of Lot 129 of HEATHER-STONE. Phase 2, Map 3, as shown on map thereof  
6 recorded in Map Book 44, Page 47, in the Office of the Register of Deeds of  
7 Cabarrus County, North Carolina. Together with improvements located thereon;  
8 said property being located at 7801 Pinecroft Court, Harrisburg, North Carolina, as  
9 security for the NOTE. (See Exhibit B, attached).

10 40. On or about January 18, 2007 SunTrust Bank parent of SunTrust  
11 Mortgage, Inc. d/b/a Sun America Mortgage a Virginia Corporation sold the  
12 NOTE and Deed of Trust (hereinafter "Mortgage Documents") to defendant  
13 RESIDENTIAL FUNDING COMPANY, LLC, a subsidiary of RESIDENTIAL  
14 CAPITAL, LLC to RESIDENTIAL ACCREDITED LOANS, INC.

15 41. On or about January 18, 2007 RESIDENTIAL ACCREDITED  
16 LOANS, INC. (hereinafter "RALI"), acting in the capacity of a single asset entity  
17 and conduit for the purchase and conveyance of Mortgage Loan Documents into  
18 the "RALI Series 2007- QS5 Trust" (hereinafter "TRUST"), did purchase and  
19 resale to the TRUST the Mortgage Documents.

20 42. On or about July 27, 2009 SunTrust Mortgage, Inc. sent Wilson a  
21 Statutory Notice advising Wilson "Your mortgage is past due." (See Exhibit C,  
22 attached).

23 43. On or about October 20, 2009 The Law Firm of Hutchens, Senter &  
24 Britton, P.A. sent Wilson a "Statement Concerning Mortgage Loan". This  
25 communication identified "SunTrust Bank (the "note holder"). (See Exhibit D,  
26 attached). HSB's communication identified themselves as a Debt Collector.

1 44. On or about October 21, 2009 HSB sent Wilson a "NOTICE OF  
2 INTENTION TO COLLECT ATTORNEY FEES". This communication  
3 confirmed HSB represents SunTrust Mortgage, Inc. and HSB is a debt collector.  
4 (See Exhibit E, attached).

5 45. On or about October 21, 2009 Rebecca W. Shaia claiming the  
6 capacity of Vice President for SunTrust Bank did execute and caused same to be  
7 recorded on November 18, 2009 in the Office of the Register of Deeds an  
8 "APPOINTMENT OF SUBSTITTUE TRUSTEE". (See Exhibit F, attached).

9 46. On or about October 27, 2009 Annette Holman-Foreman acting in the  
10 capacity of Vice President for SunTrust Mortgage, Inc. did execute an  
11 "AFFIDAVIT PURSUANT TO NCGS 45-21.16(d) AND 45-21.16c(a)" declaring  
12 "SunTrust Mortgage, Inc. is servicer ... [and] The holder of the Note and  
13 indebtedness is: SunTrust Bank ..." (See Exhibit G, attached).

14 47. On November 18, 2009 Jackie W. Ballos acting on behalf of STM did  
15 execute an "ASSIGNMENT OF NOTE AND DEED OF TRUST" with a relation  
16 back date to March 1, 2007 and said assignment is allegedly acknowledged on  
17 November 18, 2009 by Sheena M. Wyatt, Notary Public Commonwealth of  
18 Virginia. (See Exhibit H, attached).

19 48. On or about November 30, 2009 David R. Ford claiming the capacity  
20 of Attorney at Law for The Law Firm of Hutchens, Senter & Britton, P.A.  
21 Attorneys for Substitute Trustee Services, Inc. did execute and caused to be served  
22 on Wilson a "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED  
23 OF TRUST". (See Exhibit I, attached).

24 49. On or about January 11, 2010 David R. Ford, Attorney at Law for  
25 HSB on behalf of STSI did serve "NOTICE OF FORECLOSURE SALE" set for  
26 February 1, 2010.



1 50. On or about January 12, 2010 STSI filed in the General Court of  
2 Justice North Carolina County of Cabarrus a "MOTION AND ORDER TO  
3 CONTINUE" said motion reset the "foreclosure hearing" date to January 25, 2010  
4 stating, "The reason for continuance is clerk request." (See Exhibit J, attached).

5 51. On January 25, 2010 the assistant clerk of the court issued an  
6 "ORDER" authorizing a foreclosure sale finding; 1) SunTrust Bank is the holder of  
7 the note; 2) note is in default and the instrument securing the said debt gives the  
8 note holder the right to foreclose; 3) notice of the hearing has been served on the  
9 record owners; and 4) the debtors have shown no valid legal reason why  
10 foreclosure should not commence. (See Exhibit K, attached).

11 52. On or about January 25, 2010 C.T. Salyer, Attorney at Law for HSB  
12 Attorneys for STSI did executed a "NOTICE OF FORECLOSURE SALE" said  
13 notice set the sale date for February 15, 2010.

14 53. On February 15, 2010 David R. Ford, Attorney at Law for HSB on  
15 behalf of STSI did filed in the General Court of Justice North Carolina Cabarrus  
16 County a "POSTPONEMENT" recasting the date set for the foreclosure sale to  
17 April 19, 2010. (See Exhibit L, attached).

18 54. On April 26, 2010 David R. Ford, Attorney at Law for HSB on behalf  
19 of STSI did filed in the General Court of Justice North Carolina Cabarrus County  
20 an "AMENDED NOTICE OF FORECLOSURE SALE" recasting the date set for  
21 the foreclosure sale to May 17, 2010. (See Exhibit M, attached).

22 55. On May 4, 2010 Wilson filed for bankruptcy protection in the United  
23 States Bankruptcy Court Western District of North Carolina (Charlotte),  
24 Bankruptcy Petition Number 10-31255.

25 56. On May 6, 2010 Danielle Darling in the "Foreclosure Department" of  
26 HSB noticed the Office of the Clerk of the Superior Court of Cabarrus County

1 North Carolina a Chapter 13 Bankruptcy was filed by Jennifer L. Wilson and that  
2 all foreclosure proceedings have been stayed.

3 57. On May 10, 2010 Sandi Billings, Assistant Clerk of Cabarrus County  
4 Superior Court North Carolina issued an "ORDER" removing the action from the  
5 active calendar.

6 58. On May 17, 2010 Joseph J. Vonnegut and Sarah D. Miranda of HSB  
7 did execute and file a "PROOF OF CLAIM" in the United States Bankruptcy Court  
8 Western District of North Carolina declaring SunTrust Mortgage, Inc. "Creditor".  
9 (See Exhibit N, attached).

10 59. On July 6, 2010 the United States Bankruptcy Court Western District  
11 of North Carolina granted Wilson's motion for voluntary dismissal of the Petition.

12 60. On August 30, 2010 STSI filed in the General Court of Justice North  
13 Carolina Cabarrus County a "MOTION TO REACTIVATE FORECLOSURE  
14 FILE". (See Exhibit O, attached).

15 61. On September 22, 2010 Sandi Billings, Assistant Clerk of the  
16 Superior Court for North Carolina Cabarrus County issued an "EX PARTE  
17 ORDER TO REACTIVATE FORECLOSURE FILE."

18 62. On October 11, 2010 C.T. Salyer, Attorney at Law for HSB Attorneys  
19 for STSI did file in the General Court of Justice North Carolina Cabarrus County  
20 an "AMENDED NOTICE OF FORECLOSURE" recasting the date set for the  
21 foreclosure sale to November 1, 2010. (See Exhibit P, attached).

22 63. On November 15, 2010 STSI conducted a foreclosure sale accepting a  
23 credit bid from SunTrust Bank in the amount of two hundred forty-five thousand  
24 and no/100 dollars (\$245,000.00). (See Exhibit Q, attached).

25 64. On November 30, 2010 Natasha M. Barone, Attorney at Law for HSB  
26 Attorneys for STSI, did file in the General Court of Justice North Carolina  
27 Cabarrus County an "ASSIGNMENT OF BID" assigning the SunTrust Bank credit

1 bid to Deutsche Bank Trust Company Americas as Trustee Residential Funding  
2 Company, LLC f/k/a Residential Funding Corporation Attorney in Fact. (See  
3 Exhibit R, attached).

4 **FIRST CAUSE OF ACTION**

5 **I. BREACH OF CONTRACT AS TO NOTICE OF**  
6 **ACCELERATION.**

7 65. Plaintiff repeats, re-alleges and incorporates each and every allegation  
8 contained in paragraphs 1 through 64 as though fully set forth herein.

9 66. The contract, "Deed of Trust", is specific pursuant to numbered  
10 paragraph twenty-two in relevant part states,

11 *"22[.] "Acceleration; Remedies. Lender shall give notice to*  
12 *Borrower prior to acceleration following Borrower's breach of*  
13 *any covenant or agreement in this Security Instrument (but not*  
14 *prior to acceleration under Section 18 unless Applicable Law*  
15 *provides otherwise). . ."*

16 67. The NOTE identifies "The Lender or anyone who takes this Note by  
17 transfer and who is entitled to receive payments under this Note is called the "Note  
18 Holder."<sup>2</sup>

19 68. On or about July 27, 2009 SunTrust Mortgage, Inc. sent Wilson a  
20 Statutory Notice advising Wilson "Your mortgage is past due."

21 69. On or about October 20, 2009 The Law Firm of Hutchens, Senter &  
22 Britton, P.A. sent Wilson a "We are informed that you have defaulted under the  
23 terms of your Note and/or the deed of trust securing that Note and that the note  
24 holder has elected to proceed with a foreclosure action consistent with the terms of  
25 the deed of trust and North Carolina State Law." This communication identifies  
26 "SunTrust Bank (the "note holder").

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<sup>2</sup> See Exhibit A, paragraph 1.

1 70. HSB in its October 20, 2009 communication identified itself as  
2 representative for SunTrust Bank.

3 71. RFC's agent STB engaged HSB to serve the Notice of Acceleration as  
4 set forth in paragraph 22 of the Deed of Trust.

5 72. Wilson relied in the representations set forth in HSB "Notice of  
6 Acceleration" dated October 20, 2009.

7 73. Therefore, upon information and belief, Plaintiff, Jennifer L. Wilson,  
8 alleges RCL knew the representations in HSB's October 20, 2009 communication  
9 pervasively breached the contractual terms and conditions set forth in the Deed of  
10 Trust and NOTE, whereby Wilson's reliance on same caused Wilson to make and  
11 come to certain conclusions that directly resulted in monetary damages and the loss  
12 of Wilson's home by way of a foreclosure sale.

13 **SECOND CAUSE OF ACTION**

14 **II. BREACH OF CONTRACT AS TO APPOINTMENT OF**  
15 **SUBSTITUTE TRUSTEE**

16 74. Plaintiff repeats, re-alleges and incorporates each and every allegation  
17 contained in paragraphs 1 through 73 as though fully set forth herein.

18 75. On October 21, 2009 Rebecca W. Shaia claiming the capacity of Vice  
19 President for SunTrust Bank did execute and caused same to be recorded on  
20 November 18, 2009 in the Office of the Register of Deeds an "APPOINTMENT  
21 OF SUBSTITTUE TRUSTEE".

22 76. Paragraph 24 of the Deed of Trust provides the "Lender may from  
23 time to time remove Trustee and appoint a successor trustee to any Trustee  
24 appointed hereunder by an instrument recorded in the county in which this Security  
25 Instrument is recorded."

26 77. SunTrust Bank sold and transferred the NOTE and Deed of Trust to  
27 RFC on or about January 18, 2007.

1 78. RFC, pursuant to the Pooling and Servicing Agreement (hereinafter  
2 “PSA”) for the TRUST, sold the NOTE and Deed of Trust to RALI.

3 79. Pursuant to the PSA, The Company [RALI], concurrently with the  
4 execution and delivery hereof, does hereby assign to the Trustee [Deutsche Bank  
5 Trusts Company Americas] for the benefit of the Certificateholders without  
6 recourse all the right, title and interest of the Company [RALI] in and to the  
7 Mortgage Loans, including all interest and principal received on or with respect to  
8 the Mortgage Loans after the Cut-off Date [March 1, 2007] (other than payments  
9 of principal and interest due on the Mortgage Loans in the month of the Cut-off  
10 Date).<sup>3</sup>

11 80. RFC is the “Master Servicer” of the TRUST.

12 81. RFC knew RALI assigned all rights title and interest in the Wilson  
13 NOTE and Deed of Trust to the Trustee, Deutsche Bank Trusts Company  
14 Americas, for the TRUST.

15 82. The PSA is not a modification, nor “NOVATION” to the NOTE  
16 and/or Deed of Trust.

17 83. RFC knew any “APPOINTMENT OF SUBSTITUTE TRUSTEE”  
18 must be executed by the “Note Holder” (Deutsche Bank Trusts Company  
19 Americas).

20 84. Therefore, upon information and belief, Plaintiff, Jennifer L. Wilson,  
21 alleges Residential Capital, LLC and Residential Funding Company, LLC did  
22 breach paragraph 24 of the Deed of Trust and Wilson’s reliance on RCRF breach  
23 of contract damaged Wilson resulting in the loss of her home.

24 **THIRD CAUSE OF ACTION**

25 **III. BREACH OF CONTRACT AS TO ASSIGNMENT OF**  
26 **NOTE AND DEED OF TRUST**

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<sup>3</sup> Article II Standard Terms and Conditions, Section 2.01(a) of the PSA.

1 85. Plaintiff repeats, re-alleges and incorporates each and every allegation  
2 contained in paragraphs 1 through 84 as though fully set forth herein.

3 86. On November 18, 2009 Jackie W. Ballos acting on behalf of STM did  
4 execute an "ASSIGNMENT OF NOTE AND DEED OF TRUST" with a relation  
5 back date to March 1, 2007.

6 87. RFC, pursuant to the PSA for the TRUST, sold the NOTE and Deed  
7 of Trust to RALI.

8 88. Pursuant to the PSA, The Company [RALI], concurrently with the  
9 execution and delivery hereof, does hereby assign to the Trustee [Deutsche Bank  
10 Trusts Company Americas] for the benefit of the Certificateholders without  
11 recourse all the right, title and interest of the Company [RALI] in and to the  
12 Mortgage Loans, including all interest and principal received on or with respect to  
13 the Mortgage Loans after the Cut-off Date [March 1, 2007] (other than payments  
14 of principal and interest due on the Mortgage Loans in the month of the Cut-off  
15 Date).

16 89. As of March 1, 2007 the TRUST possessed all rights title and interest  
17 in the NOTE and Deed of Trust and Deutsche Bank Trust Company Americas held  
18 said interest and title for the benefit of the certificate holders of the TRUST.

19 90. RCRF knew its agent SunTrust Mortgage, Inc. held no interest or title  
20 in the NOTE and Deed of Trust that STM allegedly conveyed to SunTrust Bank on  
21 November 18, 2009.

22 91. Therefore, upon information and belief, Plaintiff, Jennifer L. Wilson,  
23 alleges Residential Capital, LLC and Residential Funding Company, LLC  
24 breached the terms and conditions of the NOTE and Deed of Trust and Wilson's  
25 reliance on RCRF breach of contracts damaged Wilson resulting in the loss of her  
26 home.

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**FOURTH CAUSE OF ACTION**

**IV. VIOLATION OF N.C.G.S. § 75.1 INCLUSIVE (UNFAIR  
DECEPTIVE TRADE PRACTICES ACT) AS TO PROOF  
OF CLAIM.**

92. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 1 through 91 as though fully set forth herein.

93. On May 17, 2010 Joseph J. Vonnegut and Sarah D. Miranda of HSB did execute and file a "PROOF OF CLAIM" in the United States Bankruptcy Court Western District of North Carolina.

94. The "PROOF OF CLAIM" declares SunTrust Mortgage, Inc. "Creditor".

95. RFC, pursuant to the PSA for the TRUST, sold the NOTE and Deed of Trust to RALI.

96. Pursuant to the PSA, "The Company [RALI], concurrently with the execution and delivery hereof, does hereby assign to the Trustee [Deutsche Bank Trusts Company Americas] for the benefit of the Certificateholders without recourse all the right, title and interest of the Company [RALI] in and to the Mortgage Loans, including all interest and principal received on or with respect to the Mortgage Loans after the Cut-off Date [March 1, 2007] (other than payments of principal and interest due on the Mortgage Loans in the month of the Cut-off Date)."

97. As of March 1, 2007 the TRUST possessed all rights title and interest in the NOTE and Deed of Trust, thus Deutsche Bank Trust Company Americas held said interest and title for the benefit of the certificate holders of the TRUST.

98. RCRF knew its agent SunTrust Mortgage, Inc., and HSB the preparer and executor of the "PROOF OF CLAIM" on behalf of SunTrust Mortgage, Inc.,

1 held no interest or title in the NOTE and Deed of Trust at the time of the filing of  
2 the "PROOF OF CLAIM", May 17, 2010.

3 99. Therefore, upon information and belief, Plaintiff, Jennifer L. Wilson,  
4 alleges Residential Capital, LLC and Residential Funding Company, LLC by and  
5 through their agents did commit deceptive acts in violation of N.C.G.S. §§ 75.1-1,  
6 75-8, 75-54, and 75-56, and Wilson's reliance on RCRF deceptive acts damaged  
7 Wilson resulting in monetary damages and the loss of her home.

8 **RELIEF REQUESTED**

9 **FIRST CAUSE OF ACTION**

10 100. WHEREFORE PLAINTIFF seeks, the following damages;

- 11 a. Actual as demonstrated and proved upon the record;
- 12 b. Compensatory in an amount of that equal to the value of the property
- 13 at the time of the foreclosure sale;
- 14 c. Consequential in an amount yet to be determined;
- 15 d. General damages in an amount yet to be determined;
- 16 e. Restitution damages;
- 17 f. Punitive in an amount to be set by the jury;
- 18 g. Treble;
- 19 h. Unliquidated in an amount to be set by the jury; and
- 20 i. Such other relief as the jury or this Court deems proper and just.

21 **SECOND CAUSE OF ACTION**

22 101. WHEREFORE PLAINTIFF seeks, the following damages;

- 23 a. Actual as demonstrated and proved upon the record;
- 24 b. Compensatory in an amount of that equal to the value of the property
- 25 at the time of the foreclosure sale;
- 26 c. Consequential in an amount yet to be determined;
- 27 d. General damages in an amount yet to be determined;



- e. Restitution damages;
- f. Punitive in an amount to be set by the jury;
- g. Treble;
- h. Unliquidated in an amount to be set by the jury; and
- i. Such other relief as the jury or this Court deems proper and just.

### **THIRD CAUSE OF ACTION**

102. WHEREFORE PLAINTIFF seeks, the following damages;

- a. Actual as demonstrated and proved upon the record;
- b. Compensatory in an amount of that equal to the value of the property at the time of the foreclosure sale;
- c. Consequential in an amount yet to be determined;
- d. General damages in an amount yet to be determined;
- e. Restitution damages;
- f. Punitive in an amount to be set by the jury;
- g. Treble;
- h. Unliquidated in an amount to be set by the jury; and
- i. Such other relief as the jury or this Court deems proper and just.

### **FORTH CAUSE OF ACTION**

103. WHEREFORE PLAINTIFF seeks, the following damages;

- a. Actual as demonstrated and proved upon the record;
- b. Compensatory in an amount of that equal to the value of the property at the time of the foreclosure sale;
- c. Consequential in an amount yet to be determined;
- d. General damages in an amount yet to be determined;
- e. Restitution damages;
- f. Punitive in an amount to be set by the jury;
- g. Treble;

- h. Unliquidated in an amount to be set by the jury; and
- i. Such other relief as the jury or this Court deems proper and just.

**ALL CAUSES OF ACTION**

104. WHEREFORE COUNTERCLAIMANT, Jennifer L. Wilson, request;

- a. Actual as demonstrated and proved upon the record;
- b. Compensatory in the amount equal to the value of the property at the time of the foreclosure sale;
- c. Consequential in the amount set by the jury;
- d. General damages in an amount yet to be determined;
- e. Restitution damages;
- f. Punitive in an amount to be set by the jury;
- g. Treble;
- h. Unliquidated in an amount to be set by the jury;
- i. That defendants take nothing by way of their foreclosure sale;
- j. That the Court "ORDER" defendants, Residential Capital, LLC and Residential Funding Company, LLC surrender the Genuine "NOTE" dated January 18, 2007 and bearing MIN # 1000104-0039041983-4;
- k. For attorney's fees, legal fees, research cost and cost of suit incurred herein according to proof;
- l. Plaintiff, Jennifer L. Wilson, be awarded such other relief as the jury deems just and proper; and
- m. Such other relief as the Court deems proper and just.

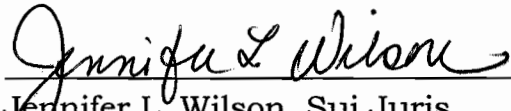
DATE: November 8, 2012

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Respectfully submitted,



Jennifer L. Wilson, Sui Juris  
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